

CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY
(“CEFA” or the “Authority”)

**UPDATED INFORMATIVE DIGEST/
FINAL STATEMENT OF REASONS**

ADOPT Sections 9071 through 9075
Title 4, Division 12, Chapter 3
California Code of Regulations

Updated Informative Digest

The Qualified Scholarship Funding Corporations Regulations (“regulations”) have been developed in response to legislation that became effective January 1, 2006 restoring an approval process, which had previously been in place and performed by the California Student Loan Authority before it merged with CEFA in the mid-1990s. The regulations specify the criteria that the Authority must consider when determining whether a not-for-profit corporation is eligible to apply to the California Debt Limit Allocation Committee (CDLAC) for a portion of an allocation of the State Ceiling to issue Qualified Scholarship Funding Bonds for the state’s Student Loan Program.

The Authority initially proposed adopting Sections 9071 – 9074 of Title 4 of Chapter 3 of the California Code of Regulations, but in response to public comments, has added Section 9075. Public hearings were held on March 29, 2006 and July 27, 2006. There have been no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

Final Statement of Reasons

The Final Statement of Reasons is separated into two parts. Part A summarizes and responds to comments received by the Authority regarding the regulations. Part B updates the Initial Statement of Reasons submitted by the Authority in April 2006.

Part A: Comments Received and Responses Thereto

During the 45-day public comment period, which occurred from April 14, 2006 through May 30, 2006, the Authority received several comments from All Student Loan in a letter dated May 19, 2006 (see Addendum 1). This corporation is one of the entities currently eligible to apply to CDLAC for a portion of an allocation of the State Ceiling to issue Qualified Scholarship Funding Bonds.

On May 31, 2006, an amended redlined version of the regulations incorporating many of the suggested changes was distributed, and a 15-day public comment period occurred from May 31, 2006 through June 15, 2006.

In response to further comments from All Student Loan on June 8, 2006 (see Addendum 2), the regulation text was amended again and reposted on June 30, 2006 for another 15-day public comment period ending July 17, 2006.

The following is a brief summary incorporating all of the changes to the regulations resulting from the public comments. Changes included refined requirements, updates to definitions, and technical amendments. Specifically, the Authority made the following changes:

- replaced the term *Applicant* with the term *Candidate*.
- added the term *Eligible Candidate*.
- clarified that the Authority has discretion whether to grant approval regardless of whether a Candidate meets the eligibility requirements.
- added the requirement that the Authority consult with CDLAC before making a final determination.
- added the term *Proper Notice* and a timeline for a Candidate to communicate its intent to seek CEFA approval.
- added the requirement that an entity must be exempt from federal and state taxation to be eligible and that it must provide the necessary verification.
- added the requirement that affiliates of a for-profit entity must provide a specified public benefit to meet eligibility requirements, rather than making such entities categorically ineligible.
- added a new section, Section 9075, to correspond with the new term *Proper Notice* and to provide a means to communicate to a list of potential Candidates seeking Authority approval.

A letter of support was received from All Student Loan dated July 17, 2006 (see Addendum 3). Further, the commenter attended the public hearing on July 27, 2006 to offer complete support of the permanent regulations as presented. No further comments were received.

Part B: Update of the Initial Statement of Reasons

The introductory section of the Initial Statement of Reasons is incorporated as if fully set forth in this section. The following information identifies the regulations by section including a brief description of each:

Section 9071. Purpose. This section provides introductory information regarding the need for new entities to seek and be granted Authority approval before they can apply to CDLAC for allocation of a portion of the State Ceiling unless the entity was already a qualified scholarship funding corporation prior to January 1, 2006. Unlike the annually recurring CDLAC process, once granted Authority approval, entities would not need to return to the Authority for approval in subsequent years. In addition, this section clarifies that the Authority has the discretion not to grant approval to an entity even if the entity meets the eligibility requirements and the Authority will consult with CDLAC before making a final determination.

Section 9072. Definitions. This section defines certain terms and words necessary to carry out and accomplish the purposes, objectives and provisions of the Act.

Section 9073. Factors to Be Considered by the Authority. This section makes specific the attributes and qualifications that the Authority will consider when determining whether to grant approval.

Section 9074. Information to Be Submitted the Candidate to the Authority. This section authorizes the Authority to require candidates to provide specific information to assist the Authority in making its determination. Required specific information includes, but is not limited to: ownership structure, description of present/past student loan activities/experiences, articles of incorporation and bylaws, audited financial statements, completed legal status questionnaire, resumes for each board member and all key personnel, descriptions of partnerships with public or private organizations, verification of state and federal tax-exempt status, verification of nonprofit status, descriptions of California business activities/operations, a business plan, anticipated volume of student loans associated with receiving tax-exempt bond financing, information related to its programs and services and any other information requested by Authority staff that is related to the criteria listed in Section 9073.

Section 9075. Public Notice. This section has been added in response to public comments to provide a means to communicate a list of potential candidates seeking Authority approval.

REQUIRED DETERMINATIONS

Local Mandate

The proposed regulations do not impose any mandate on local agencies or school districts.

Alternatives

The Authority has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would as effective and less burdensome to affected private persons than the proposed regulations.

Addendum 1

Comments Received in Response to 45-Day Public Comment Period April 14, 2006 – May 30, 2006

Public Comment (PC) 1 refers to comments from All Student Loan included in a letter dated May 19, 2006.

PC 1-01: Refer to Section 9071 Purpose - The defined terms “qualified scholarship funding bonds” and “state ceiling” should be capitalized.

Response: The Authority agrees and modified the terms accordingly.

PC 1-02: Refer to Section 9072. Definitions - Amend subsection (a) as follows: ~~Applicant~~ Candidate means a ~~student loan entity~~ corporation seeking approval from the Authority to apply for an allocation of the State Ceiling for the purpose of issuing a Qualified sScholarship fFunding bBonds.

Response: The Authority agrees that the term “Applicant” should be changed to “Candidate” to distinguish those entities that apply for volume cap through CDLAC, which uses the term “Applicant” in its application procedures. The term has been modified throughout the regulations and the remaining public comments pertaining to this subsection have been updated accordingly.

PC 1-03: Refer to Section 9072. Definitions - Create a new subsection (b) and term, “Eligible Candidate”, that (1) is incorporated, authorized to operate, and operating as a nonprofit corporation pursuant to the Corporations Code, (2) is exempt from taxation under Section 501(c)(d) of the Internal Revenue Code of 1986 and Section 23701d of the Revenue and Taxation Code, (3) has its principal place of business in California, (4) as required by its articles of incorporation and bylaws, is established and must be operated exclusively for the purpose of acquiring student loan notes incurred under the Higher Education Act of 1965, and must devote any income (after payment of expenses, debt service, and the creation of reserves for the same) to the purchase of additional student loan notes or to pay over any income to the United States, (5) is not owned or controlled by, or operated under common control with a corporation or other entity that does not meet the criteria in subsections (b)(1), (b)(2) and (b)(3) hereof, and (6) has served Proper Notice.

Response: The Authority agrees in part. The term “Eligible Candidate” has been added and much of the language that was previously in Section 9073(a) has been moved as suggested. However, the Authority did not incorporate each and every suggestion:

- Section 9072 (b)(1)(A) reads “under California Law” instead of “pursuant to the Corporations Code” as both have the same effect and the Authority verbiage is less exclusive.
- Section 9072 (b)(1)(C) includes “branch offices in California.” The Authority rejects the limitation to narrow the scope of the regulations and exclude an entity that has a branch office in California. (see 3rd bullet below and last paragraph of this section).

- PC 1-03 (b)(5) – was not added since the Authority disagrees with this limitation as previously mentioned in the 2nd bullet above. However, in consideration of the public comment and to address the concerns raised, the Authority added (b)(1)(E) and a new subsection (b)(2) [see last paragraph in this section] to further refine this requirement.

The Authority added subsection (b)(2) to exclude any nonprofit corporation that is established or affiliated with a for-profit corporation except under certain conditions. For an affiliate of a for-profit to be eligible, the entity must provide a public benefit(s) that is not already being met by an existing qualified scholarship funding corporation, such as a grant program for financially needy students or an outreach program encouraging high school students to attend college and obtain an undergraduate degree. Permitting for-profit affiliates to qualify as Eligible Candidates provides the Authority with flexibility to consider non-traditional entities. At the same time, the higher threshold should discourage entities that do not have a serious interest in promoting access to post-secondary education.

PC 1-04: Refer to Section 9072. Definitions - Add the term, “Proper Notice”, as a new subsection (c) providing a means for potential Candidates to communicate their intent to seek Authority approval. A timeline between July 1 and August 31 (waived if no currently qualified scholarship funding corporation exists) is included to allow CEFA staff sufficient time to conduct a thorough review of potential Candidates’ qualifications in advance of the new calendar year, which is the cycle for state ceiling allocations. This timing will complement the CDLAC allocation schedule allowing Candidates sufficient time to seek Authority approval and if granted, the ability to prepare a CDLAC application to apply for volume cap in the upcoming year.

Response: The Authority agrees with the public comments and has added subsection (c) “Proper Notice” as suggested. The establishment of a timeline will provide the Authority sufficient time to make a determination.

PC 1-05: Refer to Section 9072. Definitions - Amend the definition of “Qualified Scholarship Funding Bonds” to eliminate the need for the regulations to be conformed any time a change is made to the applicable section of the Internal Revenue Code. Furthermore, the definition of Qualified Scholarship Funding Bonds is incomplete and language should be added.

Response: The Authority agrees and the public comments have been incorporated. A regulatory reference to a federal law should just be a citation, rather than the duplication of language that may be amended in the future.

PC 1-06: Refer to Section 9072. Definitions - Re-designate subsection (c) as subsection (e).

Response: The Authority agrees and subsection “State Ceiling” has been modified to reflect (e) instead of (c).

PC 1-07: Refer to Section 9072. Definitions - Amend the definition of “Student Loan” to ensure that future changes to the Higher Education Act do not necessitate a conforming change in the regulations.

Response: The Authority agrees and the public comments have been incorporated.

PC 1-08: Refer to Section 9073. Factors to Be Considered by the Authority - Delete subsection (a) of the CEFA Regulations in its entirety, and substitute a new subsection (a) as follows:

“(a) An Eligible Candidate must offer evidence sufficient for the Authority to make a finding that qualified scholarship funding corporations currently in operation in the State have not utilized the full amount of the student loan pool allocated by the California Debt Limit Allocation Committee in the previous calendar year and that this unmet need in the State that could be satisfied if the Authority authorized the Eligible Candidate to apply for an allocation from the State Ceiling, but no such evidence need be offered if the California Debt Limit Allocation Committee has adopted a resolution requesting that the Authority seek to approve one or more additional qualified scholarship funding corporations.”

Response: The Authority disagrees and rejects this comment. Allowing this change would likely create a monopoly for the existing entities that currently receive volume cap and prevent a potential new entity to assist with providing low-cost student loans to California students.

PC 1-09: Refer to Section 9073. Factors to Be Considered by the Authority - Amend subsection (b) as follows: “(b) ~~When determining whether to grant approval to~~ Upon finding an Applicant Eligible Candidate ~~that~~ has met the criteria in subdivision (a), the Authority shall consider all of the Eligible Candidate’s Applicant’s attributes and qualifications including but not limited to:”

Response: The Authority disagrees with this comment, which ties to the suggested changes in PC 1-08. However, changes have been made to conform to the changes agreed to in PC 1-03.

PC 1-10: Refer to Section 9073. Factors to Be Considered by the Authority - Insert “Eligible Candidate” or “Eligible Candidate’s” as applicable in place of the words “Applicant” or “Applicant’s” whenever used in subsections (b)(1) through (b)(11) and insert “of bonds” immediately following the word “issuance” in subsection (b)(5).

Response: The Authority agrees that the use of the term *Eligible Candidate* clarifies that the factors only apply to candidates that have already met minimum eligibility requirements.

PC 1-11: Refer to Section 9073. Factors to Be Considered by the Authority - Insert the phrase “in California” immediately before the “.” in subsection (7).

Response: The Authority rejects this comment. The commenter supports factors that would narrow the field of eligible candidates. The Authority, however, wishes to retain the discretion to consider diverse eligible candidates in the future. Rather than insert “experience in California” as a factor for consideration, the Authority has instead added “significant presence in California” as a factor to ensure that eligible candidates will provide services locally.

PC 1-12: Refer to Section 9073. Factors to Be Considered by the Authority - Amend subsection (b)(9) as follows: “(9) Whether the ~~Applicant~~ Eligible Candidate or its parent corporation has experienced an increase in its California student loan volume and asset base (direct origination or purchased, as applicable) in the previous three years.

Response: The Authority agrees in part. The Authority did not limit the increase in student loan volume as a factor to only those student loans in California, as it does not wish to restrict the regulations in this manner. The Authority agrees with the clarification that the increase in student loan volume as a factor should apply to loans purchased on the secondary market as well as those originated by the Eligible Candidate.

PC 1-13: Refer to Section 9074. *Information to Be Submitted by the Applicant to the Authority* - Insert the word “Candidate” in place of “Applicant” in the section caption. Amend the preamble as follows: “~~An Applicant~~ A Candidate seeking approval under this chapter must submit sufficient information to the Authority in order for the Authority to determine that the Candidate meets the threshold criteria to be considered an Eligible Candidate, and must also submit the following information to the Authority to assist the Authority in making a determination.”

Response: The Authority agrees with the clarifying language and the public comments have been incorporated.

PC 1-14: Refer to Section 9074. *Information to Be Submitted by the Applicant to the Authority* - Insert the word “Candidate” in place of “Applicant” in subsections (a)(1), (a)(2) and (a)(3). Amend subsection (a)(2) as follows: “(2) A description of the present student loan activity and past student loan experiences of the ~~Applicant~~ Candidate and, if applicable, its parent corporation.”

Response: The Authority agrees with the clarifying language and has modified the regulations accordingly.

PC 1-15: Refer to Section 9074. *Information to Be Submitted by the Applicant to the Authority* - In subsection (a)(6), replace “each member of”, which appears in the first line immediately prior to the word “key”, with the word “all”.

Response: The Authority agrees with the clarifying language and has modified the regulations accordingly.

PC 1-16: Refer to Section 9074. *Information to Be Submitted by the Applicant to the Authority* - Create a new subsection (a)(8) as follows: “(8) A copy of the applicable tax-exempt determination letters from the United States Internal Revenue Service and the California Franchise Tax Board.”

Response: The Authority agrees and added a new subsection (a)(8) using its preferred verbiage to incorporate the public comments. In addition, subsection (a)(9) has been added. The documents substantiate the added requirement that an entity be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and Section 23701d of the Revenue and Taxation Code as specified in Section 9072 *Definitions* (b)(1)(B).

PC 1-17: Refer to Section 9074. *Information to Be Submitted by the Applicant to the Authority* - In subsection (b)(3), insert the word “reasonably” immediately prior to the word “anticipates.”

Response: The Authority agrees with the clarifying language and has modified the regulations accordingly.

PC 1-18: Refer to Section 9074. Information to Be Submitted by the Applicant to the Authority - Insert the word “Candidate” in place of “Applicant” in subsections (b)(1) – (b) (4), and in place of “organization” in (b)(5).

Response: The Authority agrees with the clarifying language and has modified the regulations accordingly.

PC 1-19: Create a new section as follows:

“Section 9075. Public Notice and Comment.

- (a) Prior to September 30 of each calendar year, the Authority must publish a list of all Candidates that have served Proper Notice during the calendar year pursuant to this chapter.
- (b) For a period of forty-five days after the list described in subsection (a)(1) is published, the Authority will accept comments from the public.

Response: The Authority partially agrees with the public comments and has added a new section called “*Public Notice*” including subsection (a) with a modification to reflect that the Authority may publish a list and will make it available upon request instead of mandating that a list be published.

**Comments Received in Response to 15-Day Public Comment Period
May 31, 2006 – June 15, 2006**

PC 2 refers to comments from All Student Loan included in a letter dated June 8, 2006.

PC 2-01: It is critical that CEFA have specific and unambiguous regulatory authority to determine the number of entities eligible to compete for the annual CDLAC student loan pool. The commenter reviewed its suggested regulatory language contained in the May 19, 2006 comments and realizes that it perhaps did not take proper account of all factors and considerations involved. The following alternative language was offered: “Notwithstanding any other provision in this Chapter, the Authority is not required to grant approval to any Eligible Candidate if, in consultation with the California Debt Limit Allocation Committee, the Authority believes that approval of additional qualified scholarship funding corporations at such time would be inconsistent with the interests of the State with respect to the efficient and effective use and allocation of the State Ceiling.” Competition provides benefits to the State on multiple levels—maximizing the benefits requires properly balancing volume cap competitive forces with marketplace competitive forces.

Response: The Authority agrees in part. The volume cap of the State Ceiling allocable to the Student Loan Program is currently \$190 million. The Authority understands that there are policy considerations for reducing the number of lenders that share a portion of the volume cap. Historically, no more than three lenders in a given year have applied for volume cap. The Authority does not expect the number of applicants to increase in the future. Nevertheless, the Authority wishes to retain the discretion of which and how many applicants to give initial approval for volume cap allocation. Ultimately, CDLAC will make a final determination on those lenders who have been approved by the Authority.

The Authority did not include the suggested language verbatim, but Section 9071 *Purpose* has been further amended to incorporate the concerns raised by the public comments. Additional provisions clarify that the revised regulations require the Authority has discretion to grant approval to an entity regardless of its eligibility and that the Authority to consult and coordinate with CDLAC prior to making any final determination.

PC 2-02: Any organization seeking to become qualified to issue qualified scholarship funding bonds should (i) be incorporated as a California nonprofit corporation, (ii) be exempt from federal taxation under 501(c)(3) of the U.S. Internal Revenue Code and 23701d of the California Revenue and Taxation Code, and (iii) not be owned or controlled by an entity that does not meet these same standards.

Response: The Authority agrees with (i) and (ii), but does not agree with (iii). It should be noted that the regulations already required that an entity be a nonprofit corporation as stated in (i) above. The Authority added language to refine the necessary criteria including the requirement for an entity to be exempt from federal and state taxation as stated in (ii). Please refer to Section 9072 *Definitions* (b)(1)(B) and Section 9074. *Information to Be Submitted by the Candidate to the Authority* (a) Organizational Information (8) and (9). However, regarding (iii) above, as stated in Section 9072 *Definitions* (b)(1)(E) and (b)(2), the Authority wishes to retain the discretion to consider non-traditional entities that will provide a public benefit to students that is not already being provided by existing qualified scholarship funding corporations.

**Comments Received in Response to 15-Day Public Comment Period
June 30, 2006 – July 17, 2006**

A letter of support was received from All Student Loan dated July 17, 2006 restating that the only issue outstanding is “the continued (albeit substantially limited) possibility for the indirect involvement of a for-profit entity in the process.” However, the letter also stated that All Student Loan believes the “regulations provide a regulatory scheme that properly balances the various competing interests involved consistent with the purpose and intent of the enabling legislation.” Further, the commenter attended the public hearing on July 27, 2006 to offer complete support of the permanent regulations as presented. No further comments were received.